

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In Re:

DOUGLAS M. REDA,

Debtor.

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR RELIEF FROM
AUTOMATIC STAY PURSUANT
TO 11 U.S.C. SECTION 362(d)(1)**

Case No. 20-72840-AST
Chapter 7

ACAR Leasing LTD d/b/a GM Financial Leasing (hereinafter "ACAR") hereby submits the following memorandum of law in support of its motion for relief from the automatic stay to enforce its rights with respect to a certain vehicle subject to a Motor Vehicle Lease Agreement between ACAR and the Debtor, including, but not limited to selling the same and applying the proceeds to the obligation of the Debtor to ACAR.

I. STATEMENT OF FACTS

On or about January 2, 2019, Van Buren TRK Sales/Buick GMC and Douglas M. Reda and Kenneth J. Reda entered into that certain Motor Vehicle Lease Agreement regarding one (1) 2019 Buick Encore (hereinafter "property"). Upon information and belief, the vehicle was voluntarily surrendered on July 29, 2021 and ACAR is stayed from sale of its property.

II. ARGUMENT

Standards for Relief from the Automatic Stay

11 U.S.C. § 362(d) provides for circumstances under which this Court may terminate, annul, modify, or condition the automatic stay. 11 U.S.C. § 362(d)(1) and (2), provide:

- "(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay –

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or
- (2) with respect to a stay of an act against property under subsection (a) of this section, if -
 - (A) the debtor does not have an equity in such property; and
 - (B) such property is not necessary to an effective reorganization."

"Two threshold points should be made concerning these provisions. First, Section 362(d) is mandatory, not permissive . . . Second, the grounds for relief from stay are presented in subsections (1), (2) and (3) in the disjunctive; thus, if any one subsection applies, the Court must grant a motion for relief from automatic stay." In re Zeoli, 249 B.R. 61, 63 (Bankr. S.D.N.Y. 2000).

A. There is No Equity in the Vehicle for the Debtor or the Bankruptcy Estate

This Court has held that "[t]he secured creditor who seeks relief from the automatic stay under § 362(d)(2) must demonstrate (1) the amount of its claim, (2) that its claim is secured by a valid, perfected lien in property of the estate, and (3) that the debtor lacks equity in the property." In re Elmira Litho, Inc., 174 B.R. 892, 900 (Bankr. S.D.N.Y. 1994). The motion establishes the validity of ACAR's ownership interest. As such, there is no equity in the property for the Debtor or the bankruptcy estate.

B. The Vehicle is Not Necessary to an Effective Reorganization

For property to be necessary for an effective reorganization, an effective reorganization must be a reasonable possibility. In re Albany Partners Limited, 749 F.2d 670, 673 (11th Cir. 1984). If there is no reorganization of the debtor, then no property of that debtor can be necessary for that end. In re Dublin Properties, 12 B.R. 77, 80 (Bankr. E.D. PA 1981).

III. CONCLUSION

For the foregoing reasons, ACAR respectfully requests that this Court make and enter its Order terminating the automatic stay as to ACAR with respect to the vehicle including but not limited to selling the same and applying the proceeds of sale to the obligations of Debtor to ACAR, and for such other and further relief as the Court deems proper.

DATED: September 24, 2021

ACAR LEASING LTD
D/B/A GM FINANCIAL LEASING

By Its Counsel

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